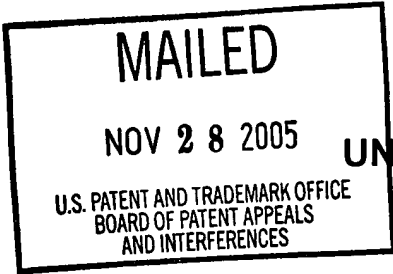


The opinion in support of the decision being entered today was not written for publication and is not binding precedent of the Board.



UNITED STATES PATENT AND TRADEMARK OFFICE

**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Ex parte NORBERT WOLTERS and RICHARD WÜBBELS

Appeal No. 2005-1973
Application No. 09/721,512

ON BRIEF

Before FRANKFORT, NASE, and BAHR, Administrative Patent Judges.
NASE, Administrative Patent Judge.

DECISION ON APPEAL

This is a decision on appeal from the examiner's final rejection (mailed June 3, 2003) of claims 1 to 21 which are all of the claims pending in this application.

We REVERSE.

BACKGROUND

The appellants' invention is directed to a feeding and picking device for an agricultural crop having a chopper for chopping crop material separated by the picking device (specification, p. 1). A copy of claims 3 to 21 is set forth in the appendix to the appellants' brief and a copy of claims 1 and 2 is set forth on the examiner's answer.

Claim 1, the only independent claim on appeal reads as follows:

A feeding and picking device for feeding and picking a standing agricultural crop wherein individual plants in the crop are provided with plant stalks, the device comprising a rotating feeding device having a feeding radius, the rotating feeding device grasp plant stalks and directs the plant stalks to a picking device which separates useable parts from the plant stalks, a chopping device chops the plant stalks, the chopping device has a chopping radius that overlaps the feeding radius of the feeding device.

The prior art references of record relied upon by the examiner in rejecting the appealed claims are:

Miller	4,148,175	Apr. 10, 1979
Decoene	4,236,369	Dec. 2, 1980
Herron et al. (Herron)	6,032,444	Mar. 7, 2000
Leßhlmer	AT 301 234	Aug. 25, 1972
Wiegert ¹	WO 99/03323	Jan. 28, 1999

¹ In determining the teachings of Wiegert, we will rely on the translation of record provided by the USPTO.

Claims 1 to 3, 5, 7, 9 and 10 stand rejected under 35 U.S.C. § 102(b) as being anticipated by Wiegert.

Claims 1 and 5 stand rejected under 35 U.S.C. § 102(b) as being anticipated by Decoene.

Claims 4 and 8 stand rejected under 35 U.S.C. § 103 as being unpatentable over Wiegert.

Claim 6 stands rejected under 35 U.S.C. § 103 as being unpatentable over Wiegert in view of Leßhlmer.

Claims 11 to 20 stand rejected under 35 U.S.C. § 103 as being unpatentable over Wiegert in view of Herron.

Claim 21 stands rejected under 35 U.S.C. § 103 as being unpatentable over Wiegert in view of Miller.

Rather than reiterate the conflicting viewpoints advanced by the examiner and the appellants regarding the above-noted rejections, we make reference to the final

rejection and the answer (mailed November 5, 2004) for the examiner's complete reasoning in support of the rejections, and to the brief (filed February 2, 2004) for the appellants' arguments thereagainst.

OPINION

In reaching our decision in this appeal, we have given careful consideration to the appellants' specification and claims, to the applied prior art references, and to the respective positions articulated by the appellants and the examiner. As a consequence of our review, we make the determinations which follow.

The anticipation rejection based on Wiegert

We will not sustain the rejection of claims 1 to 3, 5, 7, 9 and 10 under 35 U.S.C. § 102(b) as being anticipated by Wiegert.

To support a rejection of a claim under 35 U.S.C. § 102(b), it must be shown that each element of the claim is found, either expressly described or under principles of inherency, in a single prior art reference. See Kalman v. Kimberly-Clark Corp., 713 F.2d 760, 772, 218 USPQ 781, 789 (Fed. Cir. 1983), cert. denied, 465 U.S. 1026 (1984).

In the Related Appeals and Interferences section of the brief (p. 1), the appellants inform us that "[t]he applicant filed an appeal of the examiner's final rejection of US Patent Application 09/727,134, filed 30 November 2000 having similar issues on constructing the prior art and claim language." In the decision on appeal in Application No. 09/727,134 (Appeal No. 2005-0352, decided February 11, 2005), a panel of this Board reviewed a rejection of claims 1 to 4, 20 and 21 under 35 U.S.C. § 102(b) as being anticipated by Wiegert. In that appeal, the appellants argued (brief, pp. 3-4) that Wiegert does not disclose a rotating feeding element that grasps plant stalks and directs the plant stalks to a picking device which separates useable parts from plant stalks as recited in claims 1 to 4, 20 and 21. That panel agreed and stated that "the chopping unit 21 of Wiegert does not **grasp** plant stalks and direct the plant stalks to a **picking device**. Likewise, the feed chains 18, 19 of Wiegert do not **grasp** plant stalks and direct the plant stalks to a picking device. Accordingly, claims 1 to 4, 20 and 21 are not met by Wiegert."

It is this panel's opinion that Wiegert does not disclose a rotating feeding device that **grasps** plant stalks and directs the plant stalks to a picking device which separates useable parts from the plant stalks as recited in claim 1. In that regard, the feed chains 18, 19 of Wiegert do not **grasp** plant stalks and direct the plant stalks to a picking

device for the reasons outlined by the appellants in the brief (pp. 3-4) filed in Appeal No. 2005-0352.

For the reasons set forth above, claim 1 is not anticipated by Wiegert. Accordingly, the decision of the examiner to reject claim 1, and claims 2, 3, 5, 7, 9 and 10 dependent thereon, under 35 U.S.C. § 102(b) is reversed.

The anticipation rejection based on Decoene

We will not sustain the rejection of claims 1 and 5 under 35 U.S.C. § 102(b) as being anticipated by Decoene.

The appellants argue (brief, pp. 6-7) that Decoene does not teach a picking device as set forth in claim 1. The appellants assert that Decoene's feed rolls 3 are not a picking device as called for in independent claim 1. We agree. In that regard, Decoene does not teach a rotating feeding device that directs the plant stalks to a picking device which separates useable parts from the plant stalks. Decoene's feed rolls 3 do not separate useable parts from the plant stalks but instead feeds the entire cut stalk into a chopper.

For the reasons set forth above, claim 1 is not anticipated by Decoene. Accordingly, the decision of the examiner to reject claim 1, and claim 5 dependent thereon, under 35 U.S.C. § 102(b) is reversed.

The obviousness rejections

We will not sustain any of the rejections under 35 U.S.C. § 103. We have reviewed the references applied in the obviousness rejection of dependent claims 4, 6, 8 and 11 to 21 but find nothing therein which makes up for the deficiencies of Wiegert discussed above regarding claim 1.

CONCLUSION

To summarize, the decision of the examiner to reject claims 1 to 3, 5, 7, 9 and 10 under 35 U.S.C. § 102(b) as being anticipated by Wiegert is reversed; the decision of the examiner to reject claims 1 and 5 under 35 U.S.C. § 102(b) as being anticipated by

REVERSED

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